No. 86-900

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

LEO O. LABRANCHE, JR.,
Petitioner,
v.
UNITED STATES OLYMPIC COMMITTEE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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MEMORANDUM IN OPPOSITION

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Petitioner, shareholder in a phonograph record business called Olympic Records, Inc., seeks a writ of certiorari before judgment in the court of appeals in order to review the judgment of a district court that enjoined the marketing of such products under the name Olympic. For several reasons, the petition plainly fails to meet the jurisdictional requirements of this Court.

1. Rule 18 of this Court's Rules provides that

> "A petition for writ of certiorari to review a case pending in a federal court of appeals, before judgment is given in such court, will be granted *only upon a showing that the case is of such imperative public importance* as to justify the deviation from normal appellate practice and to require immediate settlement in this Court." (Emphasis supplied.)

That "imperative public importance" standard does not even begin to be met here. Contrast, *e.g.*, *Dames & Moore* v. *Regan*, 453 U.S. 654, 667-68 (1981); *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579 (1952).[1]

2. In addition, the petition shows on its face that there is doubt whether this case even is jurisdictionally one of those "in the courts of appeals," which is a prerequisite to this Court's certiorari jurisdiction under 28 U.S.C. § 1254. Petitioner, at p. 1 of the petition, expresses the hope that the Court of Appeals would waive the defect in timeliness of the filing of the notice of appeal in the District Court. Whether the Court of Appeals even has power to do so is by no means clear. See 28 U.S.C. § 2107; *cf. Griggs* v. *Provident Consumer Discount Co.*, 459 U.S. 56 (1982); *Browder* v. *Director*, 434 U.S. 257 (1978). In any event, the issue of the Court of Appeals' jurisdiction should be ruled on by that court in the first instance.

3. The alleged injury of which petitioner complains was, the petition demonstrates, an injury to a corporation and not to him personally as a shareholder. Yet his complaint is brought only on his own behalf. In such circumstances, the requirements of standing are not met.

4. Petitioner asserts that he can amplify the arguments in *San Francisco Arts & Athletics, Inc.* v. *United States Olympics Committee*, No. 86-270, currently pending. But he has already had full opportunity to do so.

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[1] *Porter* v. *Dicken*, 328 U.S. 252 (1946), cited in the Petition at 9, is no authority for such an unwarranted departure from this Court's practice. *Porter* v. *Dicken* was a case in which certiorari was granted on the *same day* as the case raising similar issues and not, as petitioner here seeks, months later. Compare *Porter* v. *Lee*, 328 U.S. 826 (1946) with *Porter* v. *Dicken*, 328 U.S. 827 (1946). Moreover, both those cases raised questions of unusual national importance concerning the power of the Emergency Price Administrator to obtain federal injunctions to enforce the Emergency Price Control Act, Act of January 30, 1942, ch. 26, 56 Stat. 23.

Petitioner (through an association he recently organized called the National Association of Olympic Businesses, and represented by his counsel herein) has filed a brief *amicus curiae* sixty pages in length in that case. He has enjoyed ample opportunity to be heard.

5. It is inappropriate for this petitioner to seek an extraordinary departure from this Court's normal procedures. It was petitioner who, beginning well over a year ago, sought and obtained a series of stays that delayed adjudication in the Court of Appeals.[2] His dilatory conduct in the Court of Appeals precludes him from seeking extraordinary expedition in this Court now.[3]

6. Even if this case had been properly presented to and decided by the Court of Appeals, there would be no reason to grant the writ. Because the constitutionality of § 110 of the Amateur Sports Act, 36 U.S.C. § 380, already is challenged in No. 86-270, which will be argued shortly, this Court's normal practice would be to hold a later petition if properly presented and then remand it to the Court of Appeals for disposition in light of the ultimate decision in No. 86-270. The Court of Appeals quite sensibly has stayed the case awaiting No. 86-270, so that it can dispose of it accordingly. There is no reason prematurely to pull the case up to this Court on an extraordinary basis, only to remand it later to the Court of Appeals.

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[2] Most of these stays were granted for petitioner's convenience and not, as the petition at p. 2 suggests, because of the pendency of a related case.

[3] On December 15, 1986, this Court denied petitioner's motion to expedite consideration, to consolidate, and for an accelerated briefing schedule.

CONCLUSION

For the reasons stated, the petition should be denied

Respectfully submitted,

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